

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Pine Ridge Associates LLC

CASE 41I-2001-R-2022

41I 1613-00

OBJECTORS: ~~Diane M. Tipton; Michael C. Tipton~~

ORDER DISMISSING OBJECTION

I. INTRODUCTION

Pine Ridge Associates owns a groundwater certificate for a well. Groundwater certificates are issued by the Montana Department of Natural Resources and Conservation (DNRC) to memorialize post-July 1, 1973 water rights. The priority date of Pine Ridge's certificate is February 21, 1974.

The Water Court issued a Preliminary Decree in Basin 41I on June 24, 2022. The Pine Ridge groundwater certificate was not included in that decree because the Water Court's jurisdiction does not extend to adjudication of post-July 1, 1973 water rights. By statute, responsibility for post-July 1, 1973 water rights rests with the DNRC. §§ 85-2-301 and 302, MCA. Nevertheless, Diane Tipton and Michael C. Tipton, principals of Pine Ridge, filed an objection to groundwater certificate 41I 1613-00 with the Water Court.¹

¹ Pine Ridge identified its water right in its objection as claim number 41L 1613-00. Pine Ridge's water right is not a claim as that term is used during the adjudication of rights before the Water Court. In addition, the correct number for its groundwater certificate is 41I 1613-00.

Tiptons' objection asserts the priority date for the groundwater certificate is October 23, 1912, rather than February 21, 1974. Tiptons ask the Water Court to modify the priority date for the groundwater certificate to the earlier priority date.

II. APPLICABLE LAW

The legislature provided several options for water users to file claims for their water rights. The initial filing deadline of April 30, 1982 was later extended to July 1, 1996 and June 30, 2019 for certain water rights. §§ 85-2-221 and 222, MCA. “[F]ailure to file a claim of an existing right as required by 85-2-221(1) establishes a conclusive presumption of abandonment of that right.” § 85-2-226, MCA. “All water claimants were provided more than ample notice and given expanded opportunity to file a claim. Section 85-2-226, MCA, makes clear that failure to file in a timely fashion establishes that the water right claimant has abandoned their right.” *In re the Existing Rights ex rel. All the Water*, 253 Mont. 167, 175, 832 P.2d 1210, 1214 (1992).

The Montana Supreme Court has held that a party who did not file a timely claim as required by statute may not file a motion to amend a post-July 1, 1973 water right memorialized by the DNRC, into a water right with a more senior, pre-July 1, 1973 priority date. By failing to file a timely claim, “they lost their opportunity to invoke the Water Court’s jurisdiction to adjudicate their priority as if they had filed one.” *In re Hurd*, 2022 MT 120, ¶ 18, 409 Mont. 79, 512 P.3d 256. “The Water Court cannot ignore this law to enforce a priority date ... as if [the claimants] had followed the claims procedure when they have not.” *Id.*

III. DISCUSSION

The Water Court scheduled a hearing to enable Pine Ridge and the Tiptons to provide evidence showing they had filed a timely claim for the groundwater certificate they seek to modify. Diane M. Tipton appeared on behalf of Pine Ridge but was unable to direct the Court to a timely filing for a claim as required by Sections 85-2-221 and 222, MCA. Although Pine Ridge filed other claims for water rights in Basin 41I, none of those claims resemble the water right described in groundwater certificate 41I 1613-00.

The record does not show a timely filing for Pine Ridge's water right. The Water Court does not have jurisdiction to address claims that did not comply with the statutory filing requirements established by the legislature. *Scott Ranch, LLC*, 2017 MT 230, ¶ 20, 388 Mont. 509, 402 P.3d 1207.

IV. ORDER

Tiptons' objection to groundwater certificate 41I 1613-00 is dismissed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Pine Ridge Associates LLC
Diane M. Tipton
Michael C. Tipton
1968 Rimini Rd
Helena, MT 59601

Note: Caption Updated 4/10/2023